IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 465 of 2003(S/B)
(Old No. 1890/1999)

State of U.P. & others …….. Petitioners

Versus

Pramod Kumar Shah & another …….. Respondents

Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

Heard Mr. K.P. Upadhyaya, learned standing counsel for the State and Mr. B.D. Upadhyaya, learned Counsel for the respondents.

The State has filed the present writ petition challenging the order passed by the U.P. State Public Service Tribunal dated 11.6.1999. The Tribunal vide his order dated 11.6.1999 has directed for the refund of the amount, if any, recovered from the petitioner as well as directing the petitioners to expunge the censure entry from the character roll of the respondent No. 1 and to clear integrity certificate of the respondent No. 1 for the relevant year.

Brief facts giving rise to the present writ petition are that the respondent No. 1 has joined in the Public Words Department as Lower Grade Clerk in Provincial Division, Nainital on 5th January, 1972 and he was promoted as Upper Grade Clerk on 17th December, 1979 and was confirmed on that post. The respondent No. 1 joined Construction Division, Lok Nirman Vibhag, Almora on 23.7.1982 as Senior Clerk and was attached to Account Section.

The respondent No. 1 was sent to deputation as Divisional Accountant w.e.f. 3.4.1991 and was attached to the office of the Executive Engineer, Investigation & Planning Division, Pithoragarh and worked their till 7.4.1994.

During the aforesaid posting, he received a notice dated 14.12.1991 issued by the Accounts Officer of the office of the Accountant General (A&E), U.P. Allahabad to show cause as to why the amount of Rs. 18,989.70/- may not be recovered from him because of shortage of goods worth of Rs. 7,59,588.08/-, which was found in

the Stores at Almora Head Quarters and Kathgodam, when the respondent No. 1 was posted at Almora in the Accounts Section.

A charge-sheet containing the same facts was served upon the respondent No. 1, who has submitted his reply on 4.2.1992 stating therein that Shri S.P.S. Rathore, J.E. and Assistant Engineer in charge of Stores could he held guilty for causing loss to the Government and the respondent No. 1 who was a simple clerk in the office at Almora could not be held responsible for the shortage in stores and for causing loss to the Government.

The grievance of the respondent No. 1 was that without considering his replies, the State Government passed the order on 25.3.1996, whereby an order was made to recover the sum of Rs. 18,989.70/- from the respondent No. 1 and also giving him censure entry and also for with-holding his integrity certificate for the relevant year.

The respondent No. 1 has submitted that in compliance of that order, the Chief Engineer passed the order dated 26.4.1996 containing the aforesaid orders for recovery and punishment.

Later on, the Chief Engineer, wrote to the Superintending Engineer, Nainital for recovery of the amount from the respondent No. 1 and for awarding censure entry and for with-holding integrity certificate of the respondent No. 1 for the relevant year.

The Superintending Engineer, who was the Appointing Authority of the respondent No. 1, passed the order on 17.5.1996 and awarded the punishment against the respondent No. 1. He also directed the Executive Engineer to pass the order of recovery at his own level and for giving censure entry and for with-holding the integrity certificate of the respondent No. 1 for the relevant year. In compliance of that order, the Executive Engineer passed the order on 10th July 1996.

The respondent No. 1 has challenged this order by way of claim petition before the U.P. Public Service Tribunal, inter alia, on the ground that the appointing authority has not applied his mind independently when in point of fact only the appointing authority was

empowered to pass the order of punishment, hence the order of punishment passed by the Superintending Engineer and Executive Engineer are illegal and without jurisdiction as the same has been passed on the dictation of their superiors; that there was no evidence on record to establish the charge against the respondent No. 1 so as to infer that the respondent No. 1 was responsible for causing loss to the Government and the entire recovery proceedings against him are wholly illegal; that in fact the orders passed against the respondent No. 1 were non-speaking orders; that the Executive Engineer was not the punishing authority of the respondent No. 1, hence the order dated 10th July, 1996 is illegal and without jurisdiction.

The Tribunal, after the hearing the parties, has recorded a finding that the order of punishment was non-speaking order and further the punishment order must indicate as to how the respondent No. 1 was guilty for the charges levelled against him and why the explanation submitted by the respondent No. 1 against the charge-sheet was not acceptable. Further, the Tribunal has also recorded a finding that it has not been indicated as to how the respondent No. 1 was responsible for causing loss to the Government while punishing the respondent No. 1.

The Tribunal has recorded a finding that from the record, it appears that the Superintending Engineer passed the order dated 17th May, 1996 for making recovery of Rs. 18989.70/- from the respondent No. 1 and also for giving him censure entry and for with-holding his integrity certificate for the relevant year in compliance of the order of the Chief Engineer dated 15.6.1996 and has not applied its own independent mind to the facts of the case and the order has been passed on the dictation of the superiors. It has also come on record that the Executive Engineer has also mechanically passed the order dated 10th July, 1996 in compliance of the order passed by the Superintending Engineer.

The respondent No. 1 has also submitted before the Tribunal that he was never in charge of the Stores at Kathgodam or Almora, hence, he cannot be held responsible for the shortage in the stores.

The Tribunal has recorded a finding that the respondent No. 1 cannot be held responsible for the shortage in the stores and for causing loss to the Government. Counsel for the respondent No. 1 has referred Rule 5A and 5B of the Punishment & Appeal Rules, the same are quoted below:

> *"5-A. After the inquiry against a government servant has been completed, and after the punishment authority has arrived at provisional conclusions in regard to the penalty to be imposed, the government servant charged shall, if the penalty proposed is dismissal, removal or reduction, be supplied with a copy of the proceedings prepared in accordance with the procedure laid down under rule 55 of the Civil Services (Classification, Control and Appeal) Rules, excluding the recommendations, if any, in regard to punishment, made by the officer conducting the inquiry, and asked to show cause by a particular date, which affords him reasonable time, why the proposed penalty should not be imposed on him;*
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> *Provided that, if for sufficient reasons, the punishing authority disagrees with any part or whole of the proceedings prepared as aforesaid, the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be communicated to the government servant charged along with the copy of the proceedings.*
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> *5-B. (a) Wherever the punishing authority is satisfied that good and sufficient reasons exist for adopting such a course, it may impose the penalty of –*
>
> *(i) censure, or*
>
> *(ii) stoppage at an efficiency bar.*
>
> *Provided that it shall not be necessary to frame formal charges against the government servant concerned or to call for his explanation.*
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> *(b) In all cases where a punishing authority imposes the penalty of –*

(i) withholding increments in the time-scale at stages where there is no efficiency bar, or

(ii) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach or orders, formal proceedings embodying a statement of the offence or fault the explanation of the person concerned, and the reasons for the punishment shall be recorded.

Provided that it shall not be necessary to record such proceedings in cases where a government servant's increment in the time-scale of his pay, at any stage other than an efficiency bar, is stopped due to his integrity remaining uncertified."

Learned counsel for the respondent No. 1 has submitted that there was no satisfaction of the punishing authority i.e. the Superintending Engineer and the punishment has been issued by the Authority lower in rank from the punishment authority, who was not competent to do the same.

Learned counsel for respondent No. 1 has further submitted that so far as the censure entry and non-certification of the integrity for the relevant year are concerned, the respondent No. 1 was not given any opportunity of being heard or show cause for the same.

The Service Tribunal has considered the entire claim of the respondent No. 1 and has rightly come to the conclusion that the punishment order was arbitrary, non-speaking and without application of mind by the appointing / punishing authority and as such, the same was violative of the principles of nature justice and also violative to the Rule 5-A and 5-B of the Punishment and Appeal Rule for Subordinate Services as referred above.

Consequently, the writ petition partly succeeds to the extent that the amount already paid by the respondent No. 1, shall not be refunded by the petitioner to the respondent No. 1. However, so far as the entries are concerned, the censure entry from the character roll of

the respondent No. 1 as well as the integrity certificate of the respondent No. 1 for the relevant year shall be expunged. The order of the Service Tribunal to that effect is confirmed.

Accordingly, the writ petition is partly allowed. There will be no order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt. 09.03.2004
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